

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID KINH DUC TRAN,  
Petitioner,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

Case No.: 10-cr-03668-W  
15-cv-1191

**ORDER DENYING MOTION TO  
VACATE, SET ASIDE, OR  
CORRECT SENTENCE [DOC. 138]**

Petitioner David Kinh Duc Tran, a federal prisoner, filed a motion to vacate, set aside, or correct his sentence under Title 28, United States Code, Section 2255 (the “Petition”). (*See Petition* [Doc. 138].) Respondent United States of America opposes. (*See Opp’n* [Doc. 140].)

The Court decides the matter on the papers submitted and without oral argument. See Civil Local Rule 7.1 (d)(1). For the reasons discussed below, the Court **DENIES** the Petition [Doc. 138].

1 **I. BACKGROUND**

2 On September 1, 2010, a federal grand jury for the Southern District of California  
3 returned a five-count indictment charging Petitioner with sexual exploitation of a child in  
4 violation of 18 U.S.C. § 2251(c). (*See First Superseding Indictment* [Doc.32].)  
5 Petitioner pled not guilty to the indictment.

6 On April 24, 2012, a jury trial began. On the second day of trial during  
7 Respondent's case-in-chief, Petitioner decided to plead guilty to all five counts. The  
8 district court accepted Petitioner's guilty plea and on February 25, 2013, Petitioner was  
9 sentenced to 410 months (35 years) in custody. (*Judgment* [Doc. 119].)

10 On March 7, 2013, Petitioner filed a notice of appeal. He argued that the district  
11 court had no jurisdiction over his offenses, the district court committed plain error in  
12 taking his guilty plea, and his 35-year sentence was unreasonable. (*See Notice of Appeal*  
13 [Doc. 120].) On April 14, 2014, the Ninth Circuit rejected each argument, and affirmed  
14 his conviction and sentence. See *United States v. Tran*, 564 F. App'x 310 (9th Cir.), cert.  
15 *denied*, 134 S. Ct. 2317, 189 L. Ed. 2d 194 (2014).

16 On May 29, 2015, Petitioner filed the pending Petition asserting (1) the district  
17 court erred in finding that it had jurisdiction over Petitioner's actions, and (2) 18 U.S.C §  
18 2251(c) is unconstitutional because it exceeds Congress' power under the Commerce  
19 Clause. (*Pet.* at 4–5, 7.) On April 22, 2016, Respondent filed its opposition. (*Opp'n*  
20 [Doc. 140].) Petitioner did not file a reply.  
21

22 **II. LEGAL STANDARD**

23 Under 28 U.S.C. § 2255, a federal sentencing court is authorized to discharge or  
24 re-sentence a defendant if it concludes that “the sentence was imposed in violation of the  
25 Constitution or laws of the United States, or that the court was without jurisdiction to  
26 impose such sentence, or that the sentence was in excess of the maximum authorized by  
27 law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255. This statute is  
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intended to alleviate the burden of habeas corpus petitions filed by federal prisoners in the district of confinement, by providing an equally broad remedy in the more convenient jurisdiction of the sentencing court. See United States v. Addonizio, 442 U.S. 178, 185 (1979); Hernandez v. Campbell, 204 F.3d 861, 864 n.4 (9th Cir. 1999).

The remedy available under § 2255 is as broad and comprehensive as that provided by a writ of habeas corpus. See United States v. Addonizio, 442 U.S. 178, 184-85 (1979). But this remedy does not encompass all claimed errors in conviction and sentencing. Id. at 187. A mere error of law does not provide a basis for collateral attack unless the claimed error “resulted in a complete miscarriage of justice or in a proceeding inconsistent with the rudimentary demands of fair procedure.” Hamilton v. United States, 67 F.3d 761, 763-64 (9th Cir. 1995) (quoting United States v. Timmreck, 441 U.S. 780, 783-84 (1979)).

### III. DISCUSSION

Although the Petition identifies three grounds, each is based on the theory that 18 U.S.C. § 2251(c) is unconstitutional because it exceeds Congress’ power under the Commerce Clause. Petitioner is wrong.

There are three general categories of activity that Congress’s commerce power gives it the authority to regulate: (1) channels of interstate commerce; (2) instrumentalities of interstate commerce, a persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. United States v. McCalla, 545 F.3d 750, 754 (9th Cir. 2008). However, unlike Congress’s power to regulate interstate commerce, the power to regulate foreign commerce is not balanced against respect for a state’s sovereign power. As a result, the power to regulate foreign commerce is greater. United States v. Clark, 435 F.3d 1100, 1103 (9th Cir. 2006).

In McCalla, the Ninth Circuit evaluated a Commerce Clause challenge to regulate (i.e., eliminate) the production of homegrown, intrastate child pornography under §

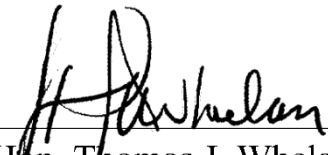
2251(a). Id. 545 F.3d at 756. Relying on the Supreme Court’s decision in Gonzalez v. Raich, 545 U.S. 1 (2005), the Ninth Circuit held Congress had the authority to regulate the noncommercial and intrastate production of child pornography on the basis that it substantially affects interstate commerce. McCalla at 755–756. Under the reasoning of McCalla, and given that Congress possesses greater power to regulate foreign commerce, the Court finds Petitioner’s argument lacks merit. See also United States v. Tran, 564 F. App’x 310 (9th Cir.), cert. denied, 134 S. Ct. 2317, 189 L. Ed. 2d 194 (2014) (rejecting Petitioner’s argument that his conduct created an insufficient effect on commerce); United States v. Clark, 435 F.3d 1100, 1107, 114 (9th Cir. 2006) (“Congress legitimately exercises its authority to regulate the channels of commerce where a crime committed on foreign soil is necessarily tied to travel in foreign commerce . . .”).

#### IV. CONCLUSION & ORDER

For the foregoing reasons, the Court **DENIES** Petitioner’s § 2255 motion to vacate, set aside, or correct his sentence [Doc. 138].

#### **IT IS SO ORDERED.**

Dated: August 31, 2016

  
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Hon. Thomas J. Whelan  
United States District Judge